THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 15

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte ROBERT A. LINDNER

Appeal No. 95-2661
Application 08/004,840[1]

ON BRIEF

Before KIMLIN, GARRIS, and PAK, Administrative Patent Judges.

GARRIS, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on an appeal from the final rejection of claims 3 through 5, 8, 10 through 12, 14 through 17, 19, 21

[1] Application for patent filed January 19, 1993.

through 26, 28 through 30 and 33 which are all of the claims remaining in the application.

The subject matter on appeal relates to a reaction product of a polyol, a monocarboxylic acid and a dicarboxylic acid wherein the reaction product has an acid number from 6.5 to 40. The appealed subject matter also relates to a mixture of polyvinyl chloride and the aforementioned reaction product. This appealed subject matter is adequately illustrated by independent claims 17 and 21 which read as follows:

17. The reaction product of a member selected from the group consisting of glycerine and pentaerythritol, a member selected from the group consisting of stearic and oleic acid and mixtures thereof, and adipic acid wherein the reaction product has an acid number from 6.5 to 40.

21. An intimate mixture comprising polyvinylchloride and the reaction product of a polyol with respect to the -OH groups a monocarboxylic acid and a dicarboxylic acid with respect to the carboxylic groups wherein sufficient excess monocarboxylic or dicarboxylic acid is employed to give a reaction product having an acid number from 6.5 to 40.

The references relied upon by the examiner as evidence of obviousness are:

Worschech et al. (Worschech)	3,875,069	Apr. 1, 1975
Lindner	4,487,874	Dec. 11, 1984

Sanderson et al. (Sanderson) 817,041 Jul. 22, 1959
(British Patent)

All of the claims on appeal stand rejected under 35 U.S.C. § 103 as being unpatentable over (1) Worschech alone or (2) Sanderson alone or (3) Worschech taken with Lindner.

We refer to the main and reply briefs and to the answer for a complete exposition of the respective viewpoints expressed by the appellant and the examiner concerning the above-noted rejections.

For the reasons set forth below, we cannot sustain any of these rejections.

As properly argued by the appellant, neither Worschech nor Sanderson contains any teaching or suggestion of the here-claimed reaction product having an acid number from 6.5 to 40. Indeed, Worschech expressly and repeatedly teaches against an acid number value exceeding 6 (e.g., see line 34 in column 2, lines 2, 27 and 62 in column 3, lines 14, 53 and 68 in column 4 and line 9 in column 5). Aside from this evidentiary deficiency, the rejections based upon these references alone are further

defective in that the examiner has advanced no reason at all to support his conclusion that it would have been obvious to modify the reaction products of Worschech or Sanderson in such a manner as to result in products having acid numbers within the appellant's claimed range.

In light of the foregoing, it is clear that the examiner's Section 103 rejections of the appealed claims based upon Worschech alone or Sanderson alone cannot be sustained.

The Section 103 rejection of the appealed claims over Worschech taken with Lindner also cannot be sustained. Except for impermissible hindsight, an artisan with ordinary skill would have had no reason for combining these references in the manner proposed by the examiner. More particularly, although the specific polycarbonate resin lubricants in Examples I and II of Lindner have acid values within the here-claimed range, this reference contains no teaching or suggestion that such acid values are desirable or that patentee's lubricants would be effective for polyvinyl chloride, in addition to polycarbonate, resins. Under these circumstances, Lindner's disclosure would

not have suggested to an ordinarily skilled artisan any reason for ignoring Worschech's contrary teachings by modifying his reaction products to result in products having acid numbers within the here claimed range. Similarly, the teachings of Worschech and Lindner would not have suggested that the specific polycarbonate resin lubricants in Examples I and II of Lindner would be effective lubricants for polyvinyl chloride as required by independent claim 21 on appeal.

The decision of the examiner is reversed.

REVERSED

EDWARD C. KIMLIN)
Administrative Patent Judge)
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BRADLEY R. GARRIS) BOARD OF PATENT
Administrative Patent Judge) APPEALS AND
) INTERFERENCES
CHUNG K. PAK)
Administrative Patent Judge)

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Forrest L. Collins
7515 Avon Lane
Chester, OH 44026-2902